

08/196,169


**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/196,169 02/15/94 AFANASENKO

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EXAMINER

MULLU, J

ART UNIT

PAPER NUMBER

6

3302

DATE MAILED: 07/28/95

 COLLARD, ROE & GALGAND  
1077 NORTHERN BOULEVARD  
NEW YORK, NY 11576

F3M1/0728

 This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☒ This application has been examined
 ☒ Responsive to communication filed on 5/11/95
☒ This action is made final.

 A shortened statutory period for response to this action is set to expire three month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |   |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____   |

**Part II SUMMARY OF ACTION**

- ☒ Claims 4-6 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
- ☒ Claims 1-3 have been cancelled.
- ☐ Claims \_\_\_\_\_ are allowed.
- ☒ Claims 4-6 are rejected.
- ☐ Claims \_\_\_\_\_ are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☒ The corrected or substitute drawings have been received on 5/11/95. Under 37 C.F.R. 1.84 these drawings are ☒ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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1. The amendment filed May 11, 1995 is objected to under 35 U.S.C. § 132 because it introduces new matter into the specification. 35 U.S.C. § 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The floating crossbar and its operation with the bands 4. The examiner suggests deleting the new matter and amending the specification to cite that "the lock is essentially a conventional buckle comprising a square frame such as buckles used in safety belts.

Applicant is required to cancel the new matter in the response to this Office action.

***Claim Rejections - 35 USC § 112***

2. Claims 4-6 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**In regard to claim 4**, the functional recitation that elastic tie-members are "arranged in antagonistic pairs relative to the joints and designed for connecting said elastic tie-members with one another" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function. The examiner suggests positively citing structure as

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to the placement of the tie-members similar to the structure cited in the Remarks section of applicant's response (pages 9-10). Additionally, the examiner is unclear to what the "pelvic supports" are referring since the specification and the drawings only support that there is one pelvic support. Clarification is requested. Furthermore, there is no proper antecedent basis for "two of said supports" (lines 7-8). The remainder of the claims are necessarily rejected as being based on a rejected claim.

**In regard to claim 6**, the examiner suggests the following changes to clarify the claim language: lines 4 and 6 deleting "from" and lines 5 and 7 changing "from" to --of--.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claim 4 is rejected under 35 U.S.C. § 102(e) as being anticipated by Wilkinson. **In regard to claim 4**, Wilkinson teaches a device comprising pelvic supports 52 interconnected by elastic tie-members 34,36,40,46 arranged in antagonistic pairs

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(Figures 1-4, column 2 lines 40-65, column 3 lines 4-9 and column 4 lines 12-25).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

6. **Claim 5** is rejected under 35 U.S.C. § 103 as being unpatentable over Wilkinson in view of Romney. Wilkinson teaches supports for preferably the finger support (i.e. gloves), arms, shoulders, waist, legs, knees and toe support (i.e. a shoe) (Figures 8,13 and column 2 lines 58-60). Wilkinson discloses the claimed invention except for the elbow support. Romney discloses that it is known to provide an elbow support 252 in a similar device (Figure 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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include an elbow support as taught by Romney since it was known in the art that providing an elbow support provide greater support for the arm of the user and provide a means to keep the elastic members close to the user's arms for the entire length of the arm.

7. **Claim 6** is rejected under 35 U.S.C. § 103 as being unpatentable over Wilkinson in view of Romney as applied to claim 5 above, and further in view of Mikell, Jr. Wilkinson teaches adjusters 136 of tension including a lock 144 for securing the elastic tie-members interposed between the tie-member and the support (Figures 10,11 and column 5 lines 27-40). Mikell, Jr. discloses that it is known in the art to provide a plurality of adjustment means 23 with one end connected to an elastic tie-member 12 and the other end secured to a support 17 (Figures 1,2 and column 2 lines 12-16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the elastic tie-members of Wilkinson with the adjustment means of Mikell, Jr., in order to provide a means for pre-tension the elastic tie-members.

***Response to Amendment***

In the amendment filed May 11, 1995 applicant cancelled claims 1-3 and added new claims 4-6. Currently claims 4-6 are pending in the application.

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8. Applicant's arguments filed May 11, 1995 have been fully considered but they are not deemed to be persuasive.

The applicant is respectfully reminded that the prosecution of a U.S. National patent application is independent and distinct from any other national patent office or international search authority.

In regard to applicant's arguments that the cited references represent the state of art in other fields of application, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.*, a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. In re Ludtke, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of

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the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); In re King, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); In re Ludtke, 441 F.2d at 664, 169 USPQ at 566 (CCPA 1971).

9. Applicant's arguments with respect to claim 6 have been considered but are deemed to be moot in view of the new grounds of rejection.

#### **Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

PHYS (SU) - note the supports and elastic tie members (Figures 1,2).

11. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION


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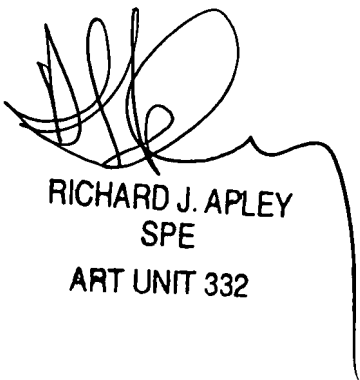
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IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeanne Clark whose telephone number is (703) 308-0063.

  
J Clark  
July 24, 1995

  
RICHARD J. APLEY  
SPE  
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